Crimea, International Law, and the West Bank

The same rules apply.

JUN, 2014 · BY EUGENE KONTOROVICH

Secretary of State John Kerry spent the spring shuttling between his two major foreign-policy concerns—Russia's control over Crimea and Israel's control over the West Bank—entirely unaware that he was engaged in a world-historical irony. Both these situations turn on identical international-law principles. Indeed, the failure of the United States to apply these principles consistently has led to the long-standing failure of its Middle East initiatives, while inadvertently opening the door for Russian aggression.

The legal principle that explains why Crimea was and remains under Ukraine's sovereignty also validates Israel's presence in the West Bank.

Let us start with the less controversial case. The international community agrees that, despite Russia's annexation, Crimea remains sovereign Ukrainian territory. On March 27, the UN General Assembly voted 100 to 11 to continue to recognize Crimea as part of Ukraine. Russia cannot rewrite Ukraine's frontiers at will.

But, as many foreign-policy realists argued while Vladimir Putin was making his move, it is not all that clear why Crimea *should* belong to Ukraine in the first place. The substantial majority of the population is ethnically, linguistically, and religiously Russian. The majority of its population probably prefers to be ruled from Moscow rather than Kiev (though not by the 90-plus percent margin of the recent shotgun referendum). The territory is adjacent to Russia and has been part of Russia historically.

So why Ukrainian sovereignty over Crimea? The answer: Nikita Khrushchev's caprice. In 1954, the first secretary of the Central Committee detached Crimea from the Russian Soviet Socialist Republic and gave it to the Ukrainian Soviet Socialist Republic. He did not consult the Crimeans, but it did not much matter, as everyone was ruled from the Kremlin anyway.

Thus, all Ukraine has for its claim of title to Crimea is a dead dictator's whim. But for international law, that is more than enough. When new countries emerge from old ones or from colonial empires, the last official international borders constitute the new boundary lines. This doctrine is known as *uti possidetis iuris* (meaning "you possess under law"). It has been applied to the borders of new states around the world and recognized as a basic principle of international law by the International Court of Justice. Even when several states emerge from one, as Russia and Ukraine did from the USSR, the prior internal administrative divisions become the new international frontiers.

Most striking, this principle applies in full when the old borders were colonial or otherwise undemocratically imposed. If it were not so, new countries would be born with all their borders in dispute, and endless frontier conflicts between neighbors would ensue. That is why international law sets the last official boundaries, even colonial provincial boundaries, as the permanent ones. Subsequent aggression cannot change them, as the reaction to Russia's Crimean conquest shows.

Now let us apply these principles to Israel.

The disintegration of the Ottoman Empire in World War I led to the division of its territories in the Middle East. The core of the Ottoman Empire became the new country of Turkey, which, in turn, surrendered all Turkish sovereignty over Ottoman territory in the rest of the Middle East (not just Israel, but also modern-day Iraq, Syria, Lebanon, and Jordan). Instead of imposing their own sovereignty on the parts of the Ottoman Empire they conquered, Britain and France allowed the newly created League of Nations to transform these territories into "mandates." The European states were committed to shepherding the mandates into new independent nation-states. The League did so pursuant to an explicit clause in its charter that authorized it to create such mandates out of the lands "formerly belonging to the Turkish Empire."

In 1922, the League of Nations established a new "country" to serve as the Jewish national home. This was the Mandate for Palestine. Under certain provisions of the Mandate, Palestine was partitioned at the Jordan River to create the country of Transjordan (now called Jordan) on its eastern bank. After that, international frontiers of Mandatory Palestine ran from the river to the sea. The League of Nations Mandate for Palestine provides the legal basis not only for Israel's borders, but for those of Jordan as well, and indeed for

Israel is the state created in Mandatory Palestine. Thus under *uti possidetis iuris*, it inherits the Mandatory borders. The only question is whether anything has happened since the 1920s that legally modified these frontiers.

Three events are commonly cited as justifying the non-application of the *uti possidetis* doctrine. First was the UN General Assembly's 1947 partition proposal, Resolution 181. Second was the partially successful 1948–49 Arab attempt to prevent the establishment of a Jewish state in Palestine, which led to the Green Line of 1949. Third was the UN Security Council's response to Israel's retaking of these territories in the Six-Day War.

The Partition Proposal

Resolution 181 did not, as many seem to think, "create" the Jewish state. That had been done on paper 25 years earlier by the League of Nations Mandate, and later through Israel's declaration of independence and War of Independence—a struggle in which the UN did nothing to promote the survival of the fledgling state.

Resolution 181 proposed an elaborate seven-sector division of Mandatory Palestine, an idea the Jewish leadership was willing to accept, but that the Arabs rejected. The General Assembly Resolution did nothing to alter the Mandatory borders because the GA is not a world legislature: It has no legal power to make any binding rules, let alone redraw the borders of nations.

Indeed, the resolution itself explicitly recognizes that the Assembly has no power to legislate its recommendations. If the GA were to vote today to "partition" Ukraine, it would be similarly ineffectual. The 1947 plan was a proposal for a compromise that, if accepted by both sides, would have been binding, but which had no force in itself.

Israel declared independence on May 14, 1948, with a document that "proclaim[ed] the establishment of the Jewish State in Palestine, to be called the Medinat Israel." Under the *uti possidetis iuris* principle, the borders of the new state were those of Mandatory Palestine. The new state was immediately invaded by all its neighbors, who succeeded in occupying much of its territory. But the 19-year-long occupation of parts of the Mandate by Egypt and Jordan did no more to change its borders than has Russia's equally unprovoked aggression

against Ukraine today. Indeed, if Jordan's occupation changed Israel's borders, surely Russia's 20 or so years of controlling Transnistria should change Moldova's borders and Turkey's 40-year occupation of Cyprus should change that country's borders.

The Green Line

Israel concluded armistices with its neighbors in 1949. These were not peace treaties. They were temporary agreements to stop shooting. The "Green Line" of 1949 was simply the demarcation of the separation between Israeli and Arab forces. Without establishing any sovereign border, it thereby preserved the Mandatory boundary. All of Israel's armistice agreements reflected this, including the Israeli-Jordanian one: "The provision of this Agreement shall not in any way prejudice the rights, claims and positions of either Party hereto in the ultimate peaceful settlement of the Palestine question, the provisions of this Agreement being dictated exclusively by military considerations." Other provisions also made clear that both parties recognized the Mandatory boundaries as the only international borders for Palestine. The only dispute was who would ultimately control it.

Thus the very document that formalized the Green Line specifically said it was not to be construed as a border, or anything other than a temporary line of separation between Israeli and Arab forces. When Israel expelled the Jordanian occupation forces after King Hussein attacked across the Armistice line during the Six-Day War, the need for such a separation came to an end.

President Barack Obama and his secretary of state, like so many others, use the phrase "1967 borders" to describe the Green Line; but it was explicitly not a border, nor was it created in 1967. Indeed, with the exception of Britain, no nation recognized Jordanian sovereignty over the territory of Mandatory Palestine during its 19-year occupation. When Jordan and Egypt signed peace treaties with Israel in 1979 and 1994, both nations expressly referred to the Mandate boundary as the current international border of Israel, demonstrating its continued relevance.

Resolution 242

The United Nations Security Council responded to the Six-Day War with its famous Resolution 242, which has set the basis for all subsequent action by the council. Before

1947, the Security Council does not have the power to redraw preexisting national borders. Though the council has power under its charter to take certain "binding" decisions, those are limited to authorizing economic and military means to respond to breaches of the international peace; it cannot alter the underlying dimensions of UN member states.

No less important, Security Council practice requires the Council to refer explicitly to the textual source of its authority as Chapter VII of the UN Charter in order to make resolutions binding. The resolution does not include such a reference, showing that the Council understood its resolution to be nothing more than a recommendation.

Resolution 242 famously calls for "withdrawal of Israeli armed forces from territories occupied in the recent conflict." This language was deliberately chosen by its drafters to reject demands that Israel withdraw from all territories it occupied, and instead leaves the scale of the withdrawal up to future diplomacy. The wording of 242 was drafted by the British delegation as a replacement for other versions that would have required leaving "all" the territories.

A vast literature has arisen to cope with the fact that the word *the* does not precede the word *territories* in that sentence, but like much discussion of the Arab–Israeli conflict, it puts questions concerning Israel in a unique legal universe. In fact, it is fairly easy to see whether using the language of *territories* would be a standard way for the Security Council to require complete withdrawal. I have identified 16 other resolutions demanding military pull-outs, of which four were prior to 1967. In each case, the demand for complete withdrawal is explicit, with language such as "withdraw from the whole territory" and "the territory" and with references to particular antebellum positions. The language of 242 is unique in the Security Council's history, but consistent with its own drafting history and the document's intentions. Thus reading 242 to require a complete withdrawal not only misreads the resolution, but also makes nonsense of 16 other important resolutions.

Some argue that 242 compels Israel to return to the Green Line, relying on the resolution's preamble, which stresses the "inadmissibility of the acquisition of territory by war." But that would be a strange way to require Israel to return their territorial seizures of 1949 to Jordan and Egypt. The next operative paragraph in 242, moreover, describes a withdrawal to "recognized boundaries." The 1949 Armistice Lines were not "recognized boundaries" in any legal sense. They constituted nothing more than a stand-off.

So to recap: The League of Nations, acting pursuant to powers in its charter, established the territory of Mandatory Palestine in 1922, much as the Mandate system established the borders of most other Middle Eastern states. The UN General Assembly did not have the power to modify that territory with its 1947 Partition proposal. Nor did the pan-Arab aggression of 1948–49 and its subsequent reception by the international community.

To be sure, international sentiment has turned sharply against Israel's control over much of this territory. But international law is not a popularity contest; if it were, Israel would have long ago been voted off the island.

None of this undercuts the common arguments for the creation of a Palestinian state. Those arguments are rooted in diplomatic and demographic considerations. But even if one accepts the idea that the Mandate gave Israel borders too large for the Jewish population, it does not therefore follow that the pan-Arab aggression of 1948–49 established presumptive or default borders. In fact, those can and should be defined only by mutual agreement between Israel and the Palestinians.

If one believes, moreover, that the vague doctrine of self-determination—which is generally *not* thought to entitle a people to an independent state—made an inarguable case for a Palestinian Arab state somewhere between the Jordan River and the Mediterranean Sea, *uti possidetis* would still be relevant. The doctrine make clear that the relevant boundaries have nothing to do with the 1949 Armistice Lines unless both parties agree they should.

Recall that when new states emerge, the doctrine dictates that their borders follow the last prior internal administrative division, such as state or provincial borders. Under the Mandate, Palestine was divided into six districts, no combination of which closely approximates the 1949 Armistice Lines. (For example, Gaza was lumped into one district with the entire Negev, while the area now called the West Bank straddled three different districts.) The 1993 Oslo Accords create three administrative divisions (Areas A, B, and C)—two under Palestinian jurisdiction and one under Israeli jurisdiction. Those lines make more sense under international law than the sum of the noncontiguous, illegal conquests by Egypt and Jordan in 1948–49.

The international community has, perhaps in sympathy with Palestinian claims, selectively forgotten the *uti possidetis* principle when it comes to Israel. Putin's actions in Ukraine

uti possidetis doctrine, it opens the door to claims like Russia's. After all, if an internationally established mandatory border does not continue to abide for a new country, why should the arbitrary frontier of a totalitarian dictator?

Russia's quick takeover of Crimea—and, as of this writing, its incremental invasion of eastern Ukraine—also has significant political lessons for Israel about any potential agreement with the Palestinians. Russia's dismemberment of Ukraine offers a frightening scenario of how a state of Palestine could continue effective activities against Israel in the wake of a peace treaty.

One of the main rewards promised to Israel for the creation of a Palestinian state in the West Bank and Gaza is that it would also give Israel internationally recognized borders. While these borders would be narrow, they would, it is said, enjoy the deep guarantee of international legitimacy. Nations would move their embassies to (West) Jerusalem. Israel would, as Tzipi Livni has said, be "put on the world map." The perceived value of this deal stems from the view that in the 21st century, sovereign borders cannot simply be rewritten.

Crimea has proven that "19th-century acts," as Kerry called them, are alive and well, and that the international community will do little to stop them. Consider Moscow's methods for taking apart Ukraine.

First, it bided its time, waiting more than two decades. Of course, if a deal with the Palestinians lasts only that long before it is followed by new demands, it will have proved to be a disastrous bargain for Israel. Second, Russia focused on areas with significant concentrations of co-ethnic population. In those areas, it followed Hitler's Sudetenland strategy of provoking riots and protests, and then protesting Ukraine's response.

This is precisely Israel's greatest fear: that after the euphoria of a peace deal, a newly emboldened Palestinian government, now with all the apparatus of a state, would begin stoking disorder among Israeli Arabs in the Galilee Triangle and Negev. Of course, Palestine would not be able to grab these territories in a single putsch, as Russia did with Crimea. Rather, it would seek to destabilize Israel, as Russia is now doing in Eastern Ukraine.

The Machiavellian goal would be to use Israel's response to the fomented unrest in a kind of diplomatic jujitsu, to make the case that the Jewish state cannot be permitted to maintain

been afforded far too much respect when it comes to Russian claims in Ukraine—greater federalism, decentralization of power, all of which would be designed to empower disgruntled minorities who show greater fealty to the neighboring aggressor than to the state of which they are citizens. In such a situation, would the world rally to defend the internationally mandated borders when it showed so little appreciation for them in Israel's case throughout so many decades?

No one with a serious understanding of international law asks if it is fair or just for Crimea to remain part of Ukraine, no matter the wishes of Crimea's population. Entertaining such a question and making it part of the discussion would eventually lead to redrawing many of the world's borders. As we have seen, the same principles that justify Ukraine's claims to Crimea justify Israel's claims to the West Bank.

Israel should not be too put out by the international community's failure to apply its general rules to the Jewish state's rights, for the Ukrainian crisis also shows the limits of those rules. Ukraine may enjoy international backing for its claims while Israel does not. But the Ukrainian crisis also shows that when it comes to action, the international community will be driven primarily by the exigencies and conveniences of the moment, not by considerations of legality or past promises. In the end, as has been the case since 1948, Israel will have to rely on itself.

LIKE TWEET

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Conservative Observance, Then and Now

A fateful difference over three decades exposes the fault line

MAR, 2014 · BY DANIEL GORDIS

It has been years, if not decades, since a study of American Jewry elicited a response as passionate and widespread as the recent Pew Research Center's, "A Portrait of Jewish Americans." While the last several National Jewish Population Surveys focused primarily on the rate of intermarriage, the Pew study's results provoked broader and deeper soul-searching— on the degree to which American Jews now view Judaism more as a culture than a religion, on the extent to which Christian belief is making its way into Jewish life (only "60 percent of U.S. Jews say a person cannot be Jewish if he or she believes Jesus was the messiah"), and on the growing portion of American Jews who refuse to identify with any of the movements that have been the bedrock of American Jewish religious life.

Discussion of the Pew study has focused especially on the dramatic decline of Conservative Judaism. In 1971, 41 percent of American Jews were affiliated with the Conservative Movement, while in the new Pew study, only 11 percent of Jews younger than 30 defined themselves as such. This rapid erosion of Conservative Judaism is more than a curiosity. For decades, Conservative Judaism not only represented the "center" in American Jewish life, but it also stood for what has been, perhaps, the most important Jewish religious project of modern times: the belief that there could be a contemporary Judaism open to the intellectual insights and progress of the West, grounded in a profound and adaptive moral core, and characterized by substantial Jewish literacy and a commitment to the rituals of Jewish life. This nimble meeting of multiple worlds was the life project of both Rabbi Joseph B. Soloveitchik, among the Modern Orthodox, and the great thinkers who led the Conservative Movement in the 1950s, 60s, and early 70s.

But the Pew study suggests that Modern Ortho- doxy and Conservative Judaism are losing ground and that the American Jewish "center" is not holding. So what has happened to Conservative Judaism? A comparison of two volumes produced by the Conservative Movement itself, 33 years apart, offers some answers.

Since its publication in 1979, Rabbi Isaac Klein's *A Guide to Jewish Religious Practice* had been the standard reference work on Jewish ritual for Conservative rabbis, educators, and their most committed laypeople. In 2012, the Conservative Movement produced a new work to replace Klein's. In its impressive scholarship and frequent moral clarity, *The Observant Life: The Wisdom of Conservative Judaism for Contemporary Jews* is a reminder of the intellectual power of Conservative Judaism. It is also a window into what has changed in the movement since the publication of Klein's book.

The 981 pages of The Observant Life (hereafter TOL), with contributions from more than 30 authors, offer powerful evidence of what has made the Conservative Movement such a rich thread in the tapestry of American Jewish life. The book exemplifies an ongoing dialectic between traditional texts and the challenge of modernity. "Conservative Jews often must undertake an uneasy negotiation between the contemporary values we hold proudly and those ancient mores that produced Jewish norms in the first place," Rabbi Jeremy Kalmanofsky observes in his chapter on sexuality. Also evident is the Conservative Movement's hallmark commitment to intellectual rigor and its tendency to complicate previously oversimplified views of Jewish life. It is, for example, commonly said that unlike Christianity, often conflicted about sexuality, Judaism has an attitude to the sexual dimension of human life that is entirely positive. Kalmanofsky's chapter makes clear that this opinion is too simplistic. He cites Maimonides, who wrote that the reason for circumcision was to curtail a man's sex drive and who insisted "the sages frown on all who have frequent sex . . . [like] roosters in a henhouse." Here as elsewhere, TOL cites texts that are likely to make even literate and educated Jews pause and think anew.

For those curious about how Conservative Jewish practice differs from more standard (usually Orthodox) practice, TOL is a treasure trove. The volume summarizes not only the movement's widely known positions on driving and the use of electricity on Shabbat, but also its decision to permit Kohanim (men of priestly descent) to marry divorcees and the ongoing disagreement regarding observance of the second day of Jewish holidays. TOL asserts that, despite mainstream practice to the contrary, there is no reason for not consuming fish and meat together. It also claims that despite classic halachic positions to the contrary, it is "right to say Kaddish for a non-Jewish parent." Other examples of such tradition-breaking interpretations abound.

The discussions of uniquely Conservative practice are occasionally peculiar. In the excellent chapter on Shabbat, Rabbis Michael Katz and Gershon Schwartz discourage the use of the Kindle e-reader, but are much more understanding of using the telephone—without explaining the distinction. When discussing the possibility of not observing the second day of Yom Tov, Rabbi Alan Lucas notes that this "innovative leniency has not gained much popularity in Conservative congregations." So what? If this is a book about Jewish law, why does the popularity of the leniency matter?

The Observant Life is also a reminder of another hallmark of Conservative Judaism: addressing issues that too many observant communities would rather sweep under the rug. The volume thus acknowledges the blatant fact that many single adults are sexually active and raises several interesting halachic issues that emerge from this changed social reality. Kalmanofsky asks whether such women should use the ritual bath, or mikvah, and rejects the imaginative but problematic suggestion of Bar-Ilan University's Zvi Zohar that such nonmarital relationships might be halachically sanctioned by invoking the biblical model of the concubine. It would have been highly ironic for the movement that spearheaded halachic means of expanding women's roles in Jewish communal life to have invoked Zohar's approach; Kalmanofsky rightly and boldly asserts that "Conservative Jews should reject this suggestion on moral grounds."

Somewhat surprisingly, the authors even endorse the view of Rabbi David Golinkin that "one should make aliyah because living in Israel is a mitzvah [and] . . . enables one . . . to live a full Jewish life by living in a Jewish state." Regarding the question of whether even Diaspora Jews ought to serve in the IDF, TOL asserts that the Torah "commands all Jews to consider how best they may assist in the ongoing work of defending Israel against its enemies." Such unabashed Zionism and wholehearted recognition of Israel's need to sustain military supremacy is a wondrous breath of fresh air in today's environment. The Conservative Movement is the only major movement that has not had an anti-Zionist phase, and despite some chinks in the armor here and there in its leadership, the movement's official position is still admirably committed to Zionism.

Though the authors and editors of TOL are to be commended for taking such stances, it is obvious that very few Conservative Jews will struggle with the question of whether to move to Israel simply because a Conservative rabbi says they should. That fact raises a second, related, question: On what issues do Conservative laypeople actually behave in a certain

But TOL does afford a glimpse of where rabbis and laypeople are increasingly at odds, and where TOL seeks to support the rabbis. The phrase “absolutely forbidden” appears four times in the volume: on officiating in or participating in intermarriages, on cremation, on participating in Christian services as a worshipper, and on stealing property. Of course, it is equally “absolutely forbidden” to eat nonkosher meat or use fire on the Sabbath, but laypeople eat what they wish and do what they want on the Sabbath, regardless of what their rabbis think. With intermarriage, burial after cremation, and integrating Christians into their families, laypeople either need their rabbis’ cooperation or seek their imprimatur. Conservative rabbis are increasingly under relentless pressure on these issues; the language of TOL hints at the fault lines that Conservative Movement– watchers might want to track in years ahead.

In the differences between the Klein volume and the new volume, one sees the most telling evidence of what has taken place in Conservative Jewish life over the past three decades. Take Hebrew, for example: Klein’s text had hundreds of phrases written out in Hebrew letters; TOL has none. That may have been due to typesetting costs, or to formatting the ebook version cleanly. (Klein’s book is also out on the Kindle, and the Hebrew looks horrendous, horribly botched when phrases split over lines.) Still, the editors must have been aware that Hebrew literacy in the movement has declined dramatically in the past three decades. And, sadly, the decision to omit Hebrew is characteristic of the movement’s tendency to meet the laity where it is, instead of urging it to strive for a literacy that it could still recoup.

Beyond language, there are shifts in fundamental orientation. Klein was an avowed social conservative. He never once so much as mentioned homosexuality in his book, even though by 1979, sexual orientation had become a major issue in American society. As for the “sexual revolution,” he said that it was “in reality old-fashioned libertinism with an academic degree attached to it.” Such language may well have sounded antiquated to some of his readers in the intervening decades, but Klein was the sort of religious leader who insisted that some social mores deserved to be preserved, even if they would be observed in the breech.

Rabbi Elliot Dorff’s chapter on homosexuality illustrates how much has changed. It is by far the most peculiar chapter in the book, with bizarrely detailed discussions of sexual practice, a strange use of the first person, and a history, in entirely unnecessary detail, of

the movement's shifting policy on homosexuality that goes on almost interminably. (Meanwhile, the issues of women in the rabbinate or in the minyan, both critically important, get only a few paragraphs elsewhere in the volume.)

Dorff asserts that the "verses in Leviticus banning gay sex are unclear, as witnessed by the varying interpretations of those verses by contemporary biblical scholars." That claim is intellectually dishonest. While it is true that contemporary biblical scholars have interpreted these verses (often tortuously) in a variety of ways, the verses themselves are not "unclear." They are condemnatory. Period. What one should do about their plain meaning in light of the moral challenge that homosexuality presents is a subject of legitimate debate; but to begin the discussion by asserting that the verses are ambiguous reflects an unwillingness to acknowledge that the movement's recent rulings on homosexuality are so radical that they call into question the movement's claim to be halachic—at least in the way it had defined "halachic" for the better part of a century.

A similar skewing of intellectual transparency appears in Rabbi Carl Astor's chapter on conversion. It is a source of great frustration to many Conservative rabbis that "many Orthodox rabbis do not accept Conservative conversions as valid." He asserts that "to convert to Judaism requires a commitment to both the Jewish religion and to the Jewish people." Alas, matters are not that simple. The rabbinic tractate Gerim asserts that Jewish law has long maintained that conversion must be "for the sake of heaven" and therefore must not be performed for the sake of marriage. But the vast majority of Conservative conversions are explicitly done for the sake of marriage. That may be better than sanctioning intermarriage, but it is still halachically problematic. Rabbi Astor should have acknowledged that.

Further complicating the conversion issue is the fact that most of traditional Judaism has insisted that conversions are valid only if the prospective convert intends to observe all of Jewish law. The Talmud (Bekhorot 30b) goes so far as to say that the conversion is invalid if the convert plans to ignore even one of the "special minutiae of the Scribes' enactments." Because the overwhelming majority of Conservative converts have no intention of observing Jewish law even moderately construed— Shabbat, kashrut, daily prayer, family purity laws, and the like—the Orthodox dismissal of Conservative conversions is not without some basis. As David Ellenson and I note in our Pledges of Jewish Allegiance: Conversion, Law, and Policy-Making in Nineteenth- and Twentieth- Century Orthodox Responsa, there are

committed to halacha. Had TOL discussed them, it could have made a case for why Conservative conversions should be acceptable even for Orthodox rabbis. But the issue is never discussed; a major opportunity for raising questions about what constitutes a valid conversion, and therefore, ideal Jewish life, was missed. Or were the authors simply unwilling to acknowledge that while the reality of their communities affords them little option, Orthodox rejection of their conversions is not without basis?

More than anything, though, TOL is a reminder of the Conservative Movement's abiding inability to decide if it is an academic school of thought or away of religious life for a(rapidly shrinking) laity. TOL "is intended specifically for laypeople," writes Rabbi Michael Katz in the introduction. But if that is the case, will laypeople (those same laypeople whom the editors apparently felt could no longer cope with Hebrew letters in the text) have any idea what this sentence means: "Using gas and electric ovens for the purposes of cooking, therefore, is permitted on these holidays (Klein, p. 98, based on the text at SA Orah Hayyim 514:1 and the Mishpetei Uziel commentary to SA Orah Hayyim 19, ed. Tel Aviv, 1935, p. 66b)"?

And if the book is designed for laypeople, why the relentless focus on "critical scholarship" and the ways in which it undermines faith? Time and again, TOL subverts classic Jewish belief structures, only to note that "Nachman Krochmal argues that it was precisely through historical study that Judaism could be made relevant and compelling for modern Jews." Yet despite Krochmal's protestations, Rabbi Eliezer Diamond admits that "by nature of its critical and questioning stance, what the philosopher Paul Ricoeur calls 'the hermeneutics of suspicion,' scholarship is often a demythologizing force." If that is so, why drag that hermeneutic of suspicion into this volume? Is the goal to demonstrate the seaworthiness of the movement's academic ship, or to help these laypeople lead an "observant life"?

There are hungry souls in America, waiting for the religious center to speak to them in a way that will move them. But Conservative Judaism still seems addicted to the soulless language that has dogged it since the 1950s. Compare the following two sentences. Rabbi Karen Reiss Medwed's chapter on prayer, which essentially opens the book, begins as follows: "The obligation to engage in daily prayer is one of Scripture's less well-defined commandments." In contrast, Rabbi Jonathan Sacks's introduction to prayer in the relatively new Koren Siddur, intended primarily for use by Orthodox Jews, opens by asserting that "Prayer is the language of the soul in conversation with God."

What more is there to say? Is there any doubt about which mode of address will gain adherents?

Spiritual malnourishment is the malady most afflicting today's liberal Jews. Three generations ago, Conservative Judaism helped traditional Jews make their way into the intellectual world of the West. Today, Jews take that intellectual world for granted. What they have lost are the tools of the spirit—the words and the ways that once sustained and fortified their ancestors.

That is why it is particularly astonishing that such a gargantuan volume has not even a single chapter devoted to why Conservative Jews should care about living an "observant life" in the first place. There are moments when some of the authors seem to want to try. "Halacha is what committed Jews do," Katz writes in his fine introduction. This is absolutely true, but that is as far as the claim gets pushed. "But why must committed Jews do this?" is the obvious retort. Nothing in TOL suggests an answer. It's bound to leave thinking but yearning Jews empty, searching elsewhere.

Conservative Judaism admittedly has a tough row to hoe. Classic claims about the authority of halacha are much harder to sustain in light of Conservative Judaism's openness to biblical criticism than they are in classic Orthodox intellectual circles. But there are options. They run the gamut from the theological to the cultural and anthropological. The theologian Franz Rosenzweig suggested that one doesn't always live an "observant life" because one feels commanded to do so, but that instead, it is the performance of the ritual that in turn leads to a sense of commandedness. "The individual in performing a particular law may come via that performance to hear God's commanding voice, to sense His commanding Presence," explains Lawrence Kaplan. Or, for those not predisposed to arguments that involve God at all, consider the critic George Steiner. Hardly an advocate of traditional Judaism, Steiner in his book Real Presences once articulated the cultural foundation that any rich society requires:

A cultivation of trained, shared remembrance sets a society in natural touch with its own past....What is committed to memory and susceptible of recall constitutes the ballast of the self. The pressures of political exaction, the detergent tide of social conformity, cannot tear it from us. In solitude, public or private, the poem remembered, score played inside us, are the custodians and remembrances...of what is resistant, of what must be kept inviolate in

The poem remembered, the score played inside us, custodians and remembrances—these are precisely what a halachic life provides. When we share the same scores, recall the same poems, weep to the same melodies, and mourn the loss of the same ancient edifice, we have created the kind of rich communal discourse that has always sustained Jewish life and nourished Jewish souls. It is that sort of connection to our past, to each other, to shared dreams, and to ourselves, that religious life at its best provides. The profound genius of the halachic impulse at the core of rabbinic Judaism is demonstrated each time liberal Judaism tries to substitute something new in its stead, only to watch it prove unsustainable for the long haul.

To live in the modern world is to battle daily against "the detergent tide of social conformity," and halachic living has proven time and again that it withstands this pull better than anything else the Jews have ever invented. Contemporary Conservative Jewish ideologues seem to believe that to be intellectually defensible, every claim they make must first be marinated in a "hermeneutic of suspicion." But that is simply not true. Perhaps, more than half a century ago, religious Jews felt wondrously liberated by engaging that hermeneutic. But no longer. The challenge today is not to liberate traditional Jews, but to bring liberated Jews back home to their tradition.

Nearly 1,000 pages of The Observant Life make clear that Conservative Judaism still has not figured out how to do this. But that does not mean that it cannot be done. Someone just has to be courageous enough to tell the truth: Not so deep down, even the skeptics among us still yearn for what it is that our ancestors had. We want the connections they had, the shared memory, the same poems and yearnings reverberating in our souls.

To survive, the American Jewish "center" is going to have to urge honesty. "Look around at Jewish communities," The Observant Life might have said to its readers, "and ask yourselves, without pretense, what's working and what's not. This universe of behavior called Jewish observance is much more than a set of rituals. It is actually the only way that Jews have discovered of successfully creating a world centered around poems remembered and scores played inside us, the one way we know to safe- guard the memories and practices that, at the end of the day, are the custodians and remembrances . . . of what is resistant, of what must be kept inviolate in our psyche. You know you want that, and we have that to offer."

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Tonight's lullaby, Gustav Holst's "This have I done for my true love," is for MY true love. See you on Thanksgiving! https://t.co/aZLHdyt0B5

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